

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Anniston and Ashland, Alabama)

College Park, Covington and)

Milledgeville, Georgia))

MM Docket No. 98-112

RM - 9027

RM - 9268

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS

WNNX LICENSE INVESTMENT CO.

Mark N. Lipp
Amy E. Weissman
Scott C. Cinnamon
SHOOK, HARDY & BACON L.L.P.
1850 K Street N.W., Suite 900
Washington, D.C. 20006-2244
(202) 261-2045

Its Counsel

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SUMMARY

College Park, Georgia is a thriving community of over 20,000 people, characterized by a strong local government that provides extensive services to its residents, more than 800 commercial establishments meeting the needs of its citizenry, a widespread feeling of community identity and independence, and a number of other attributes demonstrating that it is independent and self-supporting. It lacks only a local radio station to directly serve the needs and interests of College Park residents.

WNNX License Investment Co. ("WNNX"), licensee of Station WHMA(FM), Anniston, Alabama ("WHMA"), seeks the Commission's authorization to bring College Park its first local service by reallocating WHMA to College Park. WNNX's proposal would do more than just bring College Park its first local service; it would also (i) offer two new services at Anniston and Ashland, Alabama to replace WHMA's signal, as well as the opportunity for additional new or upgraded services to fill in the vacated area and thereby provide a diversity of signals where there was previously only one signal; (ii) provide a net gain in population of almost 1.7 million people; (iii) entirely eliminate the preexisting short spacing, overlap, and interference to WUSY, Cleveland, Tennessee; and (iv) eliminate a pre-existing short spacing to Station WVNA-FM, Tuscumbia, Alabama.

Despite the obvious benefits of WNNX's proposal for College Park and the Commission's allocation scheme in general, several parties filed Comments opposing the proposed reallocation. Preston W. Small opposes the College Park proposal because it conflicts with his pending proposal to reallocate Station WLRR-FM from Milledgeville, Georgia to Covington or Social Circle, Georgia. The College Park proposal would be favored over either of Small's communities under Priority 3.

Cox Radio, Inc. and Jefferson-Pilot Communications Company also filed Comments opposing WNNX's proposal. Along with Small, their primary focus is on attempting to challenge WNNX's showing of independence under the criteria enunciated in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). However, their respective analyses raise the standard to a level that would make it nearly impossible for any deserving community to qualify for a first local service preference. As WNNX points out, the overwhelming body of case law supports a finding of independence on all of the *Tuck* factors.

For these reasons, WNNX urges the Commission to reject the opposing Comments and to grant WNNX's proposal to reallocate WHMA to College Park, Georgia, a community fully deserving of a first local service preference.

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REPLY COMMENTS

WNNX License Investment Co. ("WNNX"), licensee of Station WHMA(FM), Anniston, Alabama, hereby responds to the opposing Comments filed by Cox Radio, Inc. ("Cox"), Preston W. Small ("Small"), Jefferson-Pilot Communications Company ("Jefferson-Pilot") (collectively "Opponents"), and the supporting comments filed by Southern Star Communications, Inc. ("Southern Star") and Brantley Broadcasting Associates ("BBA"), in this proceeding. As has been demonstrated and as will be further shown, College Park is an independent community as that term has been interpreted under the Tuck factors and the body of relevant case law. As such, College Park is deserving of a first local service preference, which outweighs the retention of this station at Anniston and the conflicting allotment of an adjacent channel to either Covington or Social Circle, Georgia.¹ In support hereof, WNNX states as follows

1. The proposal for Social Circle has not yet been accepted and placed on Public Notice. WNNX intends to respond to that proposal should the Commission afford a reply period.

I. PRELIMINARY COMMENTS

A. The Sandy Springs Proceeding

1. This proceeding has been characterized by the three Opponents, Cox, Small and Jefferson-Pilot, as another attempt to move into the Atlanta Urbanized Area after the Commission denied the petition of WNNX's predecessor to relocate WHMA to Sandy Springs, Georgia. *Eatonton and Sandy Springs, Georgia and Anniston and Lineville, Alabama*, ("Sandy Springs"), 6 FCC Rcd 6580 (1991), *application for review dismissed*, 12 FCC Rcd 8392 (1997), *application for review dismissed*, 13 FCC Rcd 2104 (1998). Obviously, the opponents would prefer to have the Commission treat this proposal for College Park in a similar fashion. But the only similarity between this and the previous proposal is that the same station is involved. The College Park proposal is an entirely new proposal which should be evaluated on its own merit, and should not be saddled with the problems that the Commission found in the Sandy Springs proposal. The College Park proposal completely eliminates rather than creates short spacing, overlap, or interference in areas where none existed before to Station WUSY, Cleveland, Tennessee. *See* Petition at 4-5. Indeed, the Commission stated in *Sandy Springs* at 6583 that "[a]s a general matter, we wish to encourage proposals that would eliminate or reduce existing short spacings..."² Second, the College Park proposal offers abundant community indicia of independence whereas the community of Sandy Springs lacked many of these indicia. Third, in the absence of a first local service preference for Sandy Springs, the Anniston loss area was elevated in importance under Priority 4 "other public matters." Here, in contrast, College Park is deserving of a first local service

2. This proposal would also completely eliminate a pre-existing short spacing to Station WVNA, Tuscumbia, Alabama.

preference under Priority 3, relegating the loss area to a much less important consideration. Finally, the instant College Park proposal requests a Class C3 facility (25 kW) rather the wide coverage area Class C1 (100 kW). See *Canovanas, Puerto Rico, et al.*, 12 FCC Rcd 10055 (1997), which will reach less than 50% of the Atlanta Urbanized Area. Thus, WNNX expects that the Commission will objectively evaluate the evidence of independence and not judge the speculative motives asserted by the Opponents.³

B. Standard for Determining Independence

2. Small, Cox and Jefferson-Pilot rely too heavily on *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) to compare the attributes of Richmond, California and College Park, Georgia. As the Commission noted in *Canovanas, Puerto Rico et al., supra*, the competing application for Richmond was filed against the applications for the existing facilities of Station KFRC, San Francisco, California in a renewal context. The Commission viewed the attempt by one applicant to obtain a dispositive Section 307(b) preference as a technical manipulation of Commission Rules, stating: "In order to preclude an anomalous and artificial resolution of that proceeding, we did not afford Richmond a disposition preference as a first local service." *Id* at 10058-59. Thus, the standard for crediting the indicia of independence at Richmond was much more strict than is typical in a *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) analysis, where the competitive proposals are on a more equal footing. See also *Pillar of Fire*, 62 RR 2d 276 (1987). In fact, the Commission has not even applied the *Tuck* factors as strictly as Opponents allege. Instead, as shown below, only a

3. Small in particular levels serious but wholly unfounded accusations against WNNX. WNNX will not respond to his uncalled-for attacks because it fully expects the Commission to see the accusations for what they are, and concentrate instead on the merits of this case.

majority of the factors of independence, or the presence of certain critical factors, must be demonstrated to justify the first local service preference

3. Where the Opponents cite *KFRC* and *Sandy Springs* cases based on allegedly similar indicia, it is worth noting that the Commission did not deny those communities a local service due to an insufficient showing on any particular factor. The applicant in *KFRC* specifying Richmond, California, bore a very heavy burden of needing to overcome the renewal expectancy of continued service in San Francisco. Similarly, in *Sandy Springs*, the community was denied a first local service preference due to the creation of new interference and the lack of many independence factors, such as the absence of a local government providing basic services to its residents.

4. The opponents would have the Commission believe that past case law requires a community to be completely independent on every factor and thereby have no relationship to the central city of the Urbanized Area.⁴ Under the opponents' standard, virtually no community otherwise deserving of its own radio station would qualify.⁵

4. A prime example of how Opponents misunderstand the focus of this inquiry can be found in Cox's discussion of Chevy Chase, Maryland. (Cox, at 3). The crux of Cox's argument is that Chevy Chase would never be entitled to a radio station because it borders Washington, D.C. and is within the local beltway. While WNNX has not undertaken a complete investigation of Chevy Chase's indicia of independence and other attributes, it has determined that Chevy Chase was incorporated in 1914, has a local government, and provides services to its residents. See Exhibit 1. That Cox would dismiss Chevy Chase without a second thought, and dismiss College Park in the same manner, highlights the flaws in Cox's own standard as to which urbanized communities deserve a radio station.

5. WNNX observes that Cox operates Station WJZF(FM), LaGrange, Georgia, from its studio on Peachtree Street in downtown Atlanta, which is commonly used by Stations WSB (AM/FM), licensed to Atlanta. LaGrange is located approximately 60 miles from Atlanta. In addition, Jefferson-Pilot identifies itself as the licensee of Station WSTR(FM), Smyrna, Georgia, which it operates from the same studio it uses with co-owned station WQXI(AM),
(continued...)

5. Small, Cox and Jefferson-Pilot also argue that WNNX was somehow trying to avoid the *Tuck* analysis by WNNX stating that its proposal would serve less than 50% of the Urbanized Area with a 70 dBu signal. WNNX intended no such thing. Indeed, WNNX affirmatively made the *Tuck* showing in its original petition. The 50% test was relevant to the *Tuck* criteria of "signal population coverage" and meant to distinguish this case from others where the Urbanized Area coverage was greater than 50%. See Petition at 7.

6. Aside from the Opponents' rhetoric and speculative remarks,⁶ the real crux of this case is whether WNNX has demonstrated that College Park possesses sufficient indicia of independence to warrant a first local service preference. Based on the well-established factors developed in past case law and the voluminous information WNNX presented, the answer is unequivocally yes.

II. ANALYSIS OF THE TUCK INDEPENDENCE FACTORS

7. In assessing whether a community is independent from a central city, the Commission examines the eight factors annunciated in *Faye and Richard Tuck*, 3 FCC Rcd 5374, 5378 (1988). A favorable finding on a majority of the eight factors is all that is needed for a finding

5. (...continued)

Atlanta, Georgia. Both the LaGrange and Smyrna stations place a 60 dBu signal over more than 50% of the Atlanta Urbanized Area. The Smyrna station covers 100% of the Atlanta Urbanized Area with a 70 dBu signal. Yet both Cox and Jefferson-Pilot accuse WNNX of having the intent to serve Atlanta rather than College Park, and neither appears to see the hypocrisy of their positions.

6. For example, Small speculates that WNNX's decision to seek reallocation to College Park, a location of its own choosing, rather than Sandy Springs, a location chosen by its predecessor, is evidence of city-shopping. Yet Small apparently has no problem with his decision to change his own proposal midstream from Covington to Social Circle.

of independence. *Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3570 (1997); *Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095 (1996).⁷ In fact, the Commission has found cities to be independent despite observing some degree of interdependence. See, e.g., *Cadiz and Oak Grove, Kentucky*, 10 FCC Rcd 10785 (1995); *D'Iberville and Wiggins, Mississippi*, 10 FCC Rcd 10796 (1995); *Clovis and Madera, California*, 11 FCC Rcd 5219 (1996).

8. Opponents, as the parties attempting to invoke the *Huntington* exception, bear the burden of demonstrating that College Park is not entitled to the presumptive need for local service. *Tuck*. at 5377. They have not satisfied their burden. Indeed, instead of directing the Commission to legal precedent applicable to this determination, Opponents focus on insignificant factual allegations that bear no relevance to the independence analysis. Opponents waste a large portion of their pleadings concentrating on factors that historically have not been decisionally significant, namely commuting patterns and the Airport. Obviously their strategy is to divert the Commission's attention from the more important factors, which are favorable to College Park and weigh heavily towards a finding of independence.

7. These findings underscore the important distinction between interaction and interdependence. It is naive to think that neighboring cities would have no interaction whatsoever; it is not as if this country is comprised of walled cities. But interaction does not necessarily imply interdependence, as Opponents would have the Commission believe. As shown below, although College Park may interact with its neighbors, including the Airport, Opponents have not shown College Park to be interdependent on Atlanta, and therefore have not carried their burden under *Tuck*.

9. The evidence presented by WNNX, evaluated in light of Commission precedent in other change of community allocation proceedings, abundantly supports a finding that College Park is independent from Atlanta.⁸

1. Extent to Which College Park Residents Work in Atlanta.

10. In its Petition, WNNX provided evidence showing that College Park residents work in College Park, rather than Atlanta. Opponents' efforts to refute that showing fail.

11. Small, citing the 1990 U.S. Census Database, claims that 8,398 of the 10,046 workers, or 84% of workers over 16 years of age in College Park, work outside of College Park, meaning that 16% of workers work in College Park. Small Comments at 12; Exhibit G. Unfortunately, that data is flawed. First, it is now more than eight years old, and does not account for the significant growth and development that has occurred since the data was collected. For example, when the last census was taken, the Convention Center in College Park was in its infancy; now it is a vital force in College Park. Furthermore, since 1991, the city has created 2,000 new jobs in the service sector.⁹

8. Cox also cites *Elijah Broadcasting Corp.*, 3 FCC Rcd 5350 (1990) to support its argument that College Park should not be found to be independent from Atlanta, but again that case was decided in a different context, with a different threshold necessary to achieve the preference. (Cox Comments at 6, n. 18). In *Elijah*, two mutually exclusive applicants were competing for a new AM station on 700 kHz, each proposing a different community of license and each seeking a decisive Section 307(b) preference. The standard in comparative hearings is different from the standard in allocation proceedings. Moreover, the case did not conclude with a finding that Reston, VA was an integral part of the Washington, D.C. urban area to be considered an independent community. Instead, the case was remanded for further inquiry into the question.

9. See excerpts of City of College Park, Georgia website, www.collegeparkga.com (Exhibit 2).

12. In addition, in 1998, the City of College Park estimates that 15% of its workforce is employed in College Park in local, state or federal government jobs alone.¹⁰ That figure does not take into account the 802 businesses within College Park which are staffed, in whole or in part, by College Park residents.¹¹ Using Cox's figure of 16% of residents employed in College Park, if 15% work in government jobs, then only 1% of the population could work at the 802 businesses, a highly implausible assertion. This is especially true as employment opportunities have increased. For example, the number of hotels in College Park has increased from 16 in 1990 to 27 in 1998, providing hundreds of more jobs for College Park residents. Unfortunately, the City of College Park does not have any official updated figure of commuting patterns.

13. Furthermore, the actual boundaries of the City of College Park have been "moving targets" as the city has continued to annex additional land from unincorporated areas surrounding the city limits. Based on conversations with members of the City's engineering department, WNNX has learned that College Park has annexed 243 acres to the south of the city in the last twenty years, with more than half of that annexation occurring in the last ten years. Finally, there is the inherent problem of incomplete responses, which lead to inaccurate results. For example, in the 1990 Census "...when place of work was not reported or the response was incomplete, a work location was allocated to the person based on their means of transportation to work, travel time to

10. College Park website (Exhibit 2).

11. Id.

work, industry, and location of residence and workplace of others.”¹² Such allocations are necessarily inaccurate.

14. Yet even ignoring the age and inaccuracies of the 1990 U.S. Census data upon which Small relies, the Commission should find College Park to be independent under Commission precedent. In *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996), similar facts supported a finding of independence. The proposed community (Gilbert) had a population of 29,000 (or 0.1% of the total population of the Phoenix Urbanized Area). 13% of the working population worked in Gilbert and 63% worked either in Gilbert or within a 10 mile radius of Gilbert (but outside of the City of Phoenix), while 25% were employed in Phoenix.¹³

15. The Commission has found other communities with similar percentages of workers commuting from the smaller city to the central city to be independent, and in many cases without even considering the commuting patterns of the residents of the proposed community. For example, in *Detroit, Howe, and Jacksboro, Texas, Antlers and Hugo, Oklahoma*, DA 98-1650, released August 21, 1998, the Commission approved the reallocation of a channel to Robinson, TX, where the station would place a 70 dBu signal over 70% of the Waco Urbanized Area. Robinson had a population of 7,111, while the City of Waco had a population of 103,590. The issue of commuting patterns was not considered. Similarly, in *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (1996), the fact that the proposed community (“Newcastle”) was home to “hundreds of businesses” was sufficient to demonstrate that a significant number of residents of the

12. U.S. Census Definition of Subject Characteristics, page B-22 (Exhibit 3).

13. Gilbert compared favorably to College Park on several other factors as well. See p.26, *infra*.

city must tend to those local businesses, as opposed to working in the larger city. In *Clovis, supra*, a community two-and-one-half times the size of College Park boasted more than 2,000 community businesses and the Commission concluded, amid conflicting claims regarding commuting patterns, that "...given the large number of local business activity attributed to Clovis by city officials, it is plausible that the community is capable of providing ample employment opportunity to its residents." *Clovis* at ¶19; *see also, Hallie and Ladysmith, Wisconsin*, 10 FCC Rcd 9257 (1995) (finding independence where exact figures on commuting patterns were not given, but evidence indicated that Hallie residents worked inside and outside of Hallie, and residents of other communities commuted to Hallie); *Headland Alabama and Chattahoochee Florida*, 10 FCC Rcd 10352 (1995) (finding sufficient evidence of independence even when no evidence on commuting patterns was given); *Parker* at 1096 (concluding that Parker was independent despite unclear evidence as to how many residents worked locally); *Bessemer and Tuscaloosa, Alabama*, 5 FCC Rcd 669 (1990) (finding independence without even addressing commuting patterns).

16. Opponents have not cited any cases in which the Commission found that a figure of at least 16% of residents working within the smaller city was inadequate to support a finding of independence (even though that figure is out of date and understates the resident non-commuters). WNNX has shown ample evidence on this factor.

2. Newspapers and Other Media.

17. Because College Park is part of both Fulton and Clayton Counties, residents are served by two local newspapers and several other media. The Clayton News Daily is published six days a week (Monday through Saturday) and covers events of interest to residents of College Park and other communities in Clayton County. The South Fulton Neighbor is a weekly newspaper

that covers events of local interest to residents of College Park, and five other communities in South Fulton county. The Neighbor specifically excludes Atlanta. Over 2100 people in central College Park (zip code 30337) receive the Neighbor. An additional 7100 people residing in zip code 30349, which includes the annexed part of College Park and unincorporated portions of Fulton County,¹⁴ also receive the Neighbor. The News Daily is delivered to 600 people in College Park.¹⁵ Furthermore, as demonstrated in WNNX's Petition, the City's Recreation Department publishes a newsletter that concentrates on announcements of community events.

18. In addition, the City of College Park has established and maintains its own website, "www.collegeparkga.com." Exhibit 2 hereto demonstrates the wealth of information on community events, local government, services, and more that College Park residents can access simply by accessing the website on a computer at home or work. Moreover, just this month, Media One introduced Channel 14, a new local access cable channel serving College Park.¹⁶ WNNX is informed that College Park also has its own cable franchise from Media One. The presence of College Park on the Internet and cable television gives the city's residents additional ways of obtaining community-specific information, above and beyond the two local newspapers, and without having to read Atlanta's newspapers.

14. See Exhibit 4, which is a map showing zip codes in and around College Park.

15. Circulations figures are based on telephone conferences with the circulation departments of the two newspapers.

16. Credit has been given for local cable access channels. See *Elizabeth City, North Carolina and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994).

19. Small, however, claims that because the Neighbor is published in Forest Park, a neighboring community, College Park should not be credited with having a “newspaper that covers the community’s local needs and interests.” *Tuck* at 5378; *see* Small Comments at p. 14. Small cites no case law to support his dubious presumption that the place of publication determines the content of a newspaper. Moreover, credit has been given to newspapers that are shared among several different neighboring communities, so long as the newspaper does not primarily cover events or news of the central city. *See, Ada, supra*; *see also Elizabeth City, North Carolina, supra* (crediting Chesapeake, the proposed community, for a thrice-weekly Chesapeake supplement that was inserted into the Norfolk daily paper, which had substantial circulation in Chesapeake and for the weekly local publication, the *Chesapeake Post*, even though Chesapeake was located within Norfolk Urbanized Area, and had no daily newspaper)

20. Opponents mistakenly emphasize the purported circulation of the *Atlanta Journal Constitution* as evidence of College Park’s dependence on Atlanta. Their reliance is misplaced for two reasons. First, the fact that some College Park residents read an Atlanta newspaper does not mean that those residents rely on the Atlanta paper for coverage of local needs and interests, as required under *Tuck*, 3 FCC Rcd at 5378. A more plausible explanation is that those residents who receive the Atlanta paper do so to receive state-wide and national news, rather than the local news found in the local papers and other local media. Second, the statistics relied upon by Cox to substantiate its claim that the Atlanta papers “enjoy significant penetration in the town” (Cox comments at 8 and n. 29) in fact tell us nothing about the penetration in College Park. The statistics Cox supplies in Exhibit D show circulation by county, without any means of discerning circulation in the towns that comprise those counties.

21. The evidence demonstrates that the Clayton News Daily and the South Fulton Neighbor offer a source of local news for College Park's residents and intentionally exclude reporting on news or events in Atlanta, thereby contributing to College Park's independence, along with its new cable channel. (See WNNX Petition, Exhibit 1, letter from the Neighbor).

22. These facts suffice under *Tuck*. See *Falmouth and Mashpee Massachusetts*, 10 FCC Rcd 10445 (1995); *Elizabeth City, supra*. As with other factors, the Commission has found communities to be independent without even addressing this factor or without evidence on the factor. See, e.g., *Hallie, supra* (factor not addressed); *Headland, supra* (presuming the factor favored independence in absence of evidence). In addition, the Commission has viewed a community as independent despite the absence of any local newspaper *Cadiz, supra*. Thus, this factor also favors a finding of independence.

3. Community Leaders and Residents Perceive College Park as Separate from Atlanta.

23. The perception of independence is commonplace in College Park, and was well-documented in WNNX's Petition. The Petition contained a letter from the Mayor and City Manager of College Park which underscored the city's independence. The letter pointed to the challenges the city has faced in keeping itself independent from Atlanta. Exhibit 5 hereto contains additional letters from community and business leaders demonstrating the widely held perception of independence among community leaders. In addition, implicit in the ever-increasing presence of community-directed growth, development, and events is the belief that College Park is an independent community. This type of evidence is more than adequate to satisfy *Tuck*. See, e.g., *Cadiz, supra* (relying on letter from mayor and County Judge Executive); *D'Iberville* at 10797 (relying on letter from mayor and community spirit evident in competitive athletics); *Elizabeth City*

at 3589 (in the face of conflicting opinions, letter from Mayor of proposed community "militates against a finding of interdependence" and accorded "slightly greater weight" than opinions of licensees of other stations serving the larger city.).

24. In fact, even without any evidence on this factor, WNNX could prevail, *see, e.g., Bay St. Louis and Poplarville, Mississippi*, 10 FCC Rcd 13144 (1995) (finding independence without any showing regarding community leaders' perceptions). This is particularly true since Opponents have adduced no evidence tending to show that community leaders do not view themselves as independent. College Park continues to grow independently of Atlanta, and in ways that demonstrate that community leaders perceive College Park as independent: (i) the construction of the College Park Regional Health Center that was completed in the winter of 1997; (ii) the recent initiation of construction on a new library; and (iii) the development of the Georgia International Convention Center in College Park, to name a few.¹⁷

25. The above evidence is sufficient to establish a lack of interdependence on the City of Atlanta and Opponents have adduced no credible evidencing supporting a contrary conclusion.

4. College Park has its Own Government and Elected Officials.

26. As demonstrated in WNNX's Petition, College Park has an elected mayor and four council members. In addition, the City employs 297 people on a full-time basis, including a

17. Contrary to Small's assertion that there would be no need for the Convention Center in College Park if the City of Atlanta were to disappear (Small Petition at p. 16), WNNX maintains that the Center was constructed by the residents in a further effort to further distinguish College Park from Atlanta and its Georgia World Congress Center. The Center provides a source of employment, business opportunity and tax revenue for the City of College Park.

City Manager, City Attorney, City Clerk, City Engineer and City Auditor. The myriad of services the city provides and the employees who work for the city to provide those services are more fully set forth in the WNNX Petition and below.

27. Curiously, Cox argues that somehow the fact that the Mayor and City Council members have outside jobs diminishes the significance of the local government. Cox Comments at 7. Cox offers no case law to support the proposition that a mayor or other local official must work solely in local government to contribute to a city's independence. Moreover, Cox fails to mention that the City employs 297 full-time employees to administer city services, which are paid for in a budget that exceeds \$50 million annually. The City also has a Planning Commission, a Board of Zoning Appeals and a Business and Industrial Development Authority.

28. The weight of the authority suggests that local government has traditionally been the most important *Tuck* factor; in fact, only where the community totally lacks local government will the Commission give no credit given on this factor. *Farmington, Grass Valley, Jackson, Linden, Placerville and Fair Oaks, California. Carson City and Sun Valley, Nevada*, 11 FCC Rcd 8117, 8120 (1996). That is not the case here. Cities with much smaller local governments than College Park's have been found to be independent. *See, e.g., Hallie, supra* (finding Hallie, Wisconsin, with only a five person Board of Supervisors and a full-time secretarial staff, to be independent); *Jupiter, supra* (crediting the community of Hobe Sound even though its "local" government was a Board of County Commissioners, upon which only one member from Hobe Sound's district could sit).

29. Based on these facts and controlling authority, College Park has a fully developed, largely autonomous local government that supports a finding of independence.

5. Zip Code and Phone Books.

30. WNNX takes issue with Cox's claim that the city uses an Atlanta rather than a College Park post office.¹⁸ The map attached as Exhibit 4 shows that College Park is primarily in zip code 30337. The small portion of zip code 30337 that Opponents claim is in Atlanta is in fact part of land that the Airport annexed for future expansion. A small portion of the city, which was annexed by College Park to accommodate the city's growth, is located in 30349. Another portion of College Park is served by the 30320 zip code; however, there are no residents of College Park within that zip code because the property is part of the Airport. The map clearly shows that zip code 30337 was intended to serve College Park as its primary zip code, which explains why the city has a post office to serve that zip code located on Main Street, right in downtown College Park. A photograph of the post office is provided in Exhibit 6. Furthermore, WNNX is informed that phone listings (both residential and business) for the City of College Park are included in the Bell South directory for Clayton, Fayette and Henry Counties. This directory does not include Atlanta listings.

31. WNNX is aware of no case law suggesting that a city is not independent when, because of its growth, it has to add additional zip codes. With respect to telephone books, in *Littlefield and Wolfforth, Texas*, 12 FCC Rcd 3215 (1997), *Scotland Neck and Pinetops, North Carolina*, 10 FCC Rcd 11066 (1995), *Coolidge, supra*, *Elizabeth City, supra* and *Ada, supra*, the Commission awarded credit under this factor to communities who had a post office and whose phone listings appeared with other communities or counties in a phone book separate from the central city

18. Cox Comments at p. 8.

phone book.¹⁹ In *Bessemer, supra*, the Commission found independence without addressing this factor. Based on precedent, this factor weighs in favor of a finding of independence.

6. Commercial Establishments, Health Facilities, and Transportation Systems.

32. As demonstrated in WNNX's Petition, commercial enterprises abound in College Park, which includes 802 licensed businesses. Several big businesses have facilities there, such as Coca-Cola, Valvoline,²⁰ Sysco, and AirTran.²¹ The city has a broad manufacturing industry, including food, concrete, paper, chemicals, fabricated metal, printing, publishing, petroleum, rubber, plastics, electrical machinery, and others. See Petition Exhibit 1. According to the College Park web site, a modern industrial park located within the City is the site of more than 25 industries and businesses. See Exhibit 2. College Park built and owns the FAA office complex in the city, and is home to the Georgia International Convention Center, a facility that competes with the Georgia World Congress Center in Atlanta.

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19. Jefferson-Pilot asserts that College Park and Atlanta are interdependent because they share the same area code, but offers no case law to support that proposition. Area code is not a factor in the *Tuck* analysis. Furthermore, in *Littlefield, supra*, and *Ada, supra*, the larger city and the smaller community shared the same area code, with no negative effect on the finding of independence. Jefferson-Pilot's argument lacks merit because some states have only one area code for the entire state, yet still have independent communities within the state.
20. According to information obtained in telephone conversations, Coca-Cola operates a bottling plant in College Park with 280 employees. Sysco has approximately 500 employees in its College Park food distribution facility. Valvoline does manufacturing and administrative work in its College Park facility, where it has 45 employees.
21. Jefferson-Pilot clouds the issue of commercial establishments by noting that AirTran's corporate headquarters are in Orlando, Florida and Coca-Cola's international headquarters are in Atlanta. That these companies house certain divisions elsewhere does not detract from their impact as major employers and important commercial forces in College Park.

33. College Park also has medical facilities, including the College Park Regional Health Center, which was completed in 1997. The Center is 55,000 square feet in size, the size of a small hospital, and sees 12,000 patients a month. It provides primary care and has a wellness facility. In addition, College Park has 34 medical practices. See Exhibits 6 and 7. There is also an emergency medical center and an emergency dispatch service (ambulance), as well as two private clinics.²²

34. Other aspects of life in an independent community exist in College Park. There are 36 churches in College Park. See Exhibit 8. The City also has a Woman's Club, Masonic Lodge, municipal golf course, American Legion, College Park Historical Society, Rotary Club, Eastern Star, Young at Hearts Club, Kiwanis, Boy Scouts, Girl Scouts, the Historic College Park Neighborhood Association, and a variety of other civic organizations that serve the needs of community residents.²³ Six recreation centers and eight parks also serve the City. College Park has several public schools, including College Park Elementary School, Harriet Tubman Elementary, and Franklin S. McClarin High School. It is also home to the Woodward Academy, a prestigious private school.

22. Findings of independence have been made without a hospital in the community. *Detroit, supra*, (only medical and dental clinics); *Littlefield, supra*, (EMS service only); *Jupiter, supra*, (only private doctor and dentist offices). Despite the precedent, Cox relies on the absence of a "hospital" in College Park (Cox, at 9) and mistakenly concludes that College Park residents travel to Atlanta or elsewhere for medical attention. This ignores College Park's Regional Medical Center, emergency dispatch service, doctors, and clinics. The Regional Medical Center's heavy patient load - 12,000 per month - shows that College Park residents are using its services a great deal, rather than seeking medical care in Atlanta.

23. The presence of these civic organizations is evidence of independence under this factor and also demonstrates the perception of independence shared by College Park's leaders.

35. In sum, these commercial, medical, and civic establishments and organizations are more than sufficient to weigh in favor of independence on this factor. Indeed, the Commission has based findings of independence on far fewer indicia of independence. For example, in *Cadiz, supra*, the Commission found Oak Grove to be independent, even though it had only 160 businesses, some civic clubs, churches, ambulances, school buses, and a chamber of commerce. Similarly, in *D'Iberville, supra*, the Commission found D'Iberville, a community with 260 businesses (some of which were small and local), two medical facilities/clinics, the Jaycees, and the Community Club, to be independent; *see also, Hallie, supra* (basing finding of independence on 124 businesses, 9 churches, 19 social and service organizations, and numerous parks and recreational facilities); *Headland, supra* (basing independence on a number of businesses and a Chamber of Commerce that was reciprocal with that of another city, noting the absence of a hospital, and saying nothing about transportation); *Falmouth, supra* (basing independence on 6 medical facilities, hospital, and a Chamber of Commerce representing over only 100 establishments); *Farmersville, Blue Ridge, Bridgeport, Eastland, Flower Mound, Greenville, Henderson, Jacksboro, Mineola, Mt. Enterprise, Sherman and Tatum, Texas; and Ada, Ardmore and Comanche, Oklahoma*, 12 FCC Rcd 4099 (1997) (basing independence on some local business, a local library, twelve churches, a golf course and city parks); *Littlefield, supra* (basing finding of independence on 100 businesses, an EMS service with no hospital or other major health care facility and no intracity transportation); *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg, and Fort Lee, Virginia*, 11 FCC Rcd 5758, 5760 (1996) (finding independence on presence of only a medical clinic, dental clinic, veterinary services, three chapels, bank branch, credit union, commissary, movie theater, bowling alley, service station, beverage store, museum, and exchange containing concessions).

36. College Park has far more attributes of commercial independence than any of the communities found to be independent in the above-referenced cases. The Opponents offer little to suggest otherwise, and do not refute the extensive commercial and medical establishments in College Park. Instead, Cox, for example, ignores this evidence and claims that because “only a few [local businesses] apparently use ‘College Park’ in their names,” College Park is not independent. (Cox comments at 7). Yet in the next breath, Cox claims that using the city name is not evidence of independence, suggesting that even if all 802 businesses had College Park in their names, it would not matter. (Cox, at 8).

37. Even if no business used the city name, it would not matter. The salient point is that College Park has a multitude of businesses. Regardless of the names chosen by their proprietors, 802 business establishments are licensed in College Park, offering a large variety of goods and services to the residents of College Park. Medical facilities and religious and civic organizations in College Park provide additional ingredients for an independent community. Thus, College Park residents do not need to go outside their community to obtain the goods and services they need.

38. Cox tries to define an independent city as one that is a “principal business center” (Cox at 9), citing Rand McNally. Yet the Commission has decisively chosen the *Tuck* factors, not the Rand McNally designation, to determine independence. Furthermore, Cox draws the wrong conclusion from Rand McNally’s failure to include College Park on its list of principal business centers in Georgia. A closer examination of that list (Cox comments, Exhibit E, page 87) reveals that it includes places with populations of 25,000 or more. College Park has a population of only 20,457 and therefore would not be included on that list under any circumstances.

39. Jefferson-Pilot's arguments are similarly unavailing. In fact, it offers little to refute the thriving business community in College Park. It claims that the "great majority" of College Park's businesses "appear to be strongly linked to Atlanta," yet offers little support for that allegation. (Jefferson-Pilot, at 9). As stated above, the only important fact is that there are 802 licensed business establishments, which is more than enough to satisfy this *Tuck* factor.²⁴ Finally, Jefferson-Pilot claims that the Georgia International Convention Center serves Atlanta, yet ignores the fact that Atlanta has its own facility - the Georgia World Congress Center - in direct competition with College Park's facility.²⁵

40. Small likewise offers no persuasive reason why the Commission should disregard the presence of 802 licensed businesses in College Park. Moreover, Small fails to account for the medical, civic, and community organizations that the Commission must consider under this factor. In sum, College Park vastly exceeds the quality and quantity of commercial establishments and related items required by the Commission to demonstrate independence under this factor. This factor, which has been one of the most important, weighs clearly in favor of independence.

24. See *Littlefield, supra* (100 businesses); *Ada, supra* ("Petitioner states Newcastle is home to several hundred businesses); *Coolidge, supra* (900 - 1,000 businesses for a population of 29,000); *Clovis, supra* (in excess of 2,000 businesses for a population of 50,353). Compare, *Greenfield and Del Ray Oaks, California*, 11 FCC Rcd 12681 (1996) (Finding of lack of independence based on "one church, one known civic organization and limited business activity.").

25. Small also makes unsupported assertions about the nature of conventions, going so far as to claim that College Park's Convention Center would not exist without Atlanta. Yet it is equally likely that College Park's facility provides a desirable alternative to the urban facility in Atlanta. Some people may in fact choose a more suburban setting such as College Park, which offers a variety of attractive commercial establishments and a number of historic sites, without the bustle or expense of the central city.